FILED
FEB 19 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 73-1277

EUGENE CHARLES RANDONO,
Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

GERALD S. ROURKE
Welch & Morgan
900 – 17th Street, N. W.
300 Farragut Building
Washington, D. C. 20006
Attorney for Petitioner

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

INDEX

	Page
CITATION TO OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATUTE INVOLVED	4
STATEMENT OF THE CASE	5
WHEN QUESTIONS RAISED	9
REASONS FOR GRANTING THE WRIT	9
This Case Raises Important Questions Concerning the Relationship Between the Constitutional Provision for Interstate Extradition and the Constitutional Rights of an Individual	9
CONCLUSION	16
Appendix A –	
Opinion of the Supreme Court of the State of Nevada	1a
Order to Stay Remittitur	4a
Appendix B–	
Affidavit of John D. Conley	5a
Bench Warrant	7a
Probation Report and Pronouncement of Judgment	8a

Page

Oral Opinion of the Superior Court of the State of California 9a

Order of the Eighth Judicial District Court of the State of Nevada 10a

Appendix C–
Petition for Writ of Habeas Corpus 12a

AUTHORITIES CITED

Cases:

Application of Middlebrooke,
88 F. Supp. 943 (1950),
reversed on other grounds, 199 F.2d 308 (1951),
cert. denied 342 U.S. 863 (1951) 12

Ex Parte Morgan,
78 F. Supp. 756 (1948),
affirmed 175 F.2d 404,
cert. denied, 338 U.S. 827 (1949) 11

Innes v. Tobin,
240 U.S. 127 (1916) 11

Kirdland v. Preston,
385 F.2d 670,
128 U.S. App. D.C. 148 (1967) 10

Constitution of the United States:

Article IV, Section 2, Clause 2 . . . . . 3, 9, 12

Amendment IV 4

Amendment XIV, Section 1 4

Page

Statutes:

18 U.S.C. 3182 . . . . . 5, 9, 10, 11

28 U.S.C. 1257(3) 2

IN THE

Supreme Court of the United States

No.

EUGENE CHARLES RANDONO,

Petitioner,

v.

SHERIFF, CLARK COUNTY, NEVADA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

Petitioner, Eugene Charles Randono, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Nevada entered in the above-captioned case on November 20, 1973.

CITATION TO OPINION BELOW

The opinion of the Nevada Supreme Court is unreported and is printed in Appendix A *infra*, p. A. 1.

JURISDICTION

The judgment of the Nevada Supreme Court was entered on November 20, 1973. An application for stay pending the filing and disposition of a petition for certiorari to this Court was granted by the Nevada Supreme Court on November 26, 1973 (Appendix A, p. A. 4). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Where a person is free on bond and permitted to return to his home state pending sentencing upon a felony conviction, and he suffers a heart attack and is hospitalized in his home state, and thus is unable to appear for sentencing at the scheduled time, and, through counsel, he timely requests a continuance of the sentencing on the basis of a letter from the attending physician to the court stating his condition and his hospitalization, but a bench warrant is summarily issued for his arrest, and the foregoing circumstances appear on the face of the rendition documents, and are found by the court in the asylum state in a habeas corpus hearing on a demand for extradition, is there probable cause under the Fourth Amendment for the issuance of an arrest warrant in aid of extradition?

2. In the foregoing circumstances, is the person a "fugitive from justice" who has "fled" the demanding state and therefore subject to extradition?

3. In the foregoing circumstances, where it has also been found by the court in the asylum state, on the basis of the undisputed testimony of a recognized heart specialist, that the person's condition is such that if he is incarcerated the probability of death approaches almost a certainty, does it constitute deprivation of life without due process of law under the Fourteenth Amendment to extradite that person?

4. What are the minimum procedures required by due process of law to safeguard the life of an accused in a criminal proceeding when it is shown that he has become ill or incapacitated?

CONSTITUTIONAL PROVISIONS INVOLVED

Extradition –

> A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall, on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.
>
> United States Constitution, Art. IV, Sec. 2, cl. 2.

Probable Cause for Warrants –

> . . . and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to

be searched, and the persons or things to be seized.

United States Constitution,
Amendment IV.

Due Process of Law –

. . . nor shall any state deprive any person of life . . . without due process of law . . .

United States Constitution,
Amendment XIV, Sec. 1.

STATUTE INVOLVED

Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive

the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

June 25, 1948, c. 645, 62 Stat. 822, 18 U.S.C. §3182.

STATEMENT OF THE CASE

On April 16, 1973, Petitioner was convicted in the Superior Court of Orange County, California, of two felony counts, and sentencing was scheduled for May 17, 1973. Petitioner was permitted to remain free on bail and returned to his home in Las Vegas, Nevada. Petitioner has had a serious heart condition for several years. He suffered a heart attack shortly before he was scheduled to appear for sentencing and was hospitalized at the South Nevada Memorial Hospital in Las Vegas.

On May 17, 1973, the day set for sentencing, petitioner's California counsel appeared before the court at the appointed time, submitted a letter from Dr. George Kleifgen, the attending physician, advising the court of petitioner's condition and hospitalization, and moved for a brief continuance.

The motion for a continuance was summarily denied by Superior Court Judge William C. Speirs, who thereupon issued a bench warrant for petitioner's arrest. Pursuant to the warrant a formal demand was made by the Governor of California upon the Governor of Nevada for the extradition of petitioner, and petitioner was placed under the custody of the Nevada authorities, apparently at the

hospital. After a hearing at which testimony was taken from the attending physician as to petitioner's condition, petitioner was released from custody on bail. Thereafter, a petition for writ of habeas corpus was duly filed in the Nevada state court, and the matter ultimately came on for a hearing on September 12, 1973.

The documents in support of the California extradition demand include the indictment of petitioner and an affidavit by a Deputy District Attorney referring to the trial of petitioner and his conviction, and simply stating: "On May 17, 1973, the fugitive failed to appear for sentencing and a bench warrant for his arrest was issued by the Honorable William C. Speirs of the Orange County Superior Court." (Appendix B, p. B. 4).

However, the Minute Order for the proceedings in the Orange County Superior Court, which was also part of the rendition documents, states "A letter of 'George V. H. Kleifgen, M.D.', May 16, 1973, was received and ordered filed. Motion by defendants (sic) counsel for a continuance. Motion denied. A bench warrant to issue forthwith . . ." (Appendix B, p. B. 3).

The Bench Warrant was also a part of the rendition papers. In the blank for "last known address" the Warrant states: "allegedly South Nevada Memorial Hospital (Coronary artery insufficiency)." In the blank for "Extradition" there is written "Yes," which is initialed. (Appendix B, p. B. 4).

Judge Carl J. Christensen of the Eighth Judicial District Court, Clark County, Nevada, received briefs and conducted an evidentiary hearing on the question of extradition. The testimony included that of a heart specialist,

whose expertise was stipulated by the State, as to petitioner's present condition and prognosis.

At the conclusion of the hearing Judge Christensen granted the writ of habeas corpus. According to the official transcript the following is the complete statement of the court in making this ruling:

> BY THE COURT: What a Judge might do and what a District Attorney intends to do are really items of speculation and at most, would carry with it only a possibility of it happening.
>
> In this particular case, however, it is uncontroverted that the Respondent was hospitalized; that this fact was conveyed to the Court where this Respondent was to have been present for entry of judgment and sentencing.
>
> It is further uncontroverted and clearly shown that this Respondent was on bail during the trial and after the return of the verdict by the jury, for whatever the charge was, and was on bail up until the time of the day of the entry of judgment and sentencing.
>
> It is further clearly shown and admitted that these reasonable circumstances for failure to attend on the day for entry of judgment and sentencing were known and considered prior to the issuing of a Bench Warrant; that pursuant to this Bench Warrant, the Respondent was forcibly detained in his

> hospital bed where he was a patient by the use of bands or chains or whatever.
>
> In view of these uncontroverted facts, as the same are bolstered by the corroborating testimony of the California lawyer and in his representations here, it appears that very probably the constitutional guarantee of the rights of this Respondent will be denied unless this Writ of Habeas Corpus in this proceeding is granted.
>
> The Court feeling that there is a strong probability that incarceration will follow without bail, based upon these facts that have been recited in the record, and the Court further finding that the probability of death approaches almost a certainty as reflected by the testimony of Dr. Friedman, the Court at this time grants the Writ.
>
> Bond exonerated.

(Appendix B contains the last two pages of the transcript of the hearing and the subsequent Order of the Court.)

The Attorney General of Nevada filed a notice of appeal to the Supreme Court of Nevada, and a designation of the record. On its own motion the Supreme Court took the case under advisement before any briefs were filed, rejected petitioner's repeated requests for briefing by the parties, and then issued its decision reversing the lower court and ruling that petitioner should be extradicted. (The Nevada Supreme Court Opinion is Appendix A hereto.) Thereafter, as indicated previously, the Nevada Supreme Court granted petitioner a stay of its mandate pending a petition for certiorari to this Court.

WHEN QUESTIONS RAISED

The questions presented by this petition were first raised by a petition for writ of habeas corpus filed in the Eighth Judicial District Court of the State of Nevada. A copy of the petition is printed in Appendix C hereto.

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES IMPORTANT QUESTIONS CONCERNING THE RELATIONSHIP BETWEEN THE CONSTITUTIONAL PROVISION FOR INTERSTATE EXTRADITION AND THE CONSTITUTIONAL RIGHTS OF AN INDIVIDUAL.

Proceedings for interstate extradition of fugitives are controlled by federal law, being provided for directly by the Constitution and implemented by federal statute. While Article IV, Section 2, Clause 2, of the Constitution and 18 U.S.C. §3182 do not preempt the field of extradition, it is clear that state court proceedings must be conducted in a manner consistent with the federal law, and that state courts are bound by decisions of the Supreme Court of the United States touching on the rights of persons sought to be extradicted.

While the power of the states to extradite is admittedly great, it is elementary that this power cannot be exercised in such a manner as to violate the Constitutional rights of an individual, even one convicted of a felony. Review of this case would be appropriate in view of this Court's dual responsibility for construing the provisions of the Constitution and Federal law governing extradition, and protecting the Constitutional rights of every person.

The first issue presented by this petition is whether on the facts found by the Nevada District Court to exist in this case, and not disputed or questioned by the Nevada

Supreme Court, there is probable cause under the Fourth Amendment for the issuance of a warrant for the extradition arrest of petitioner. Where a person's absence from court is adequately accounted for and not voluntary, particularly where he is shown to be unable to appear because he is physically incapacitated, as by a heart attack, it would seem his failure to appear would not constitute good cause for the issuance of an arrest warrant. While the scope of inquiry on a petition for habeas corpus to bar extradition is quite narrow, it does include an inquiry into whether the rendition documents on their face show probable cause for the issuance of an arrest warrant by the asylum state. See *Kirkland v. Preston*, 385 F.2d 670, 676, 128 U.S. App. D.C. 148 (1967), and cases there cited.

Here, the supporting documents do not show good cause, and after an evidentiary hearing into the matter the lower court in effect found that good cause did not exist for the arrest of petitioner by the State of Nevada.

While the District Court did go on from these retrospective findings to make prospective findings in the last paragraph of his ruling, which prospective findings will be discussed below, the facts would seem to support the conclusion that the petitioner's Constitutional rights under the Fourth Amendment would be violated by extradition. The Nevada Supreme Court in its decision totally ignored the crucial retrospective findings by the lower court.

The second issue presented by this petition involves the proper construction and application of 18 U.S.C. §3182. The scope of judicial inquiry on a petition for habeas corpus in an extradition proceeding includes inquiry into the statutorily required facts on which extradition must be based. Under 18 U.S.C. §3182, these facts are that the person sought to be extradicted be a "fugitive from justice"

in the demanding state, and that he has "fled" to the asylum state.

This Court has stated that 18 U.S.C. §662 (now 18 U.S.C. §§3182, 3195) expressly or by necessary implication prohibits the surrender of a person in one state for removal as a fugitive to another where it clearly appears that the person was not and could not have been a fugitive from the justice of the demanding state. *Innes v. Tobin*, 240 U.S. 127 (1916).

State courts and lower federal courts, generally, have given lip service to the "fugitive from justice" prerequisite but have defined the phrase so broadly that almost any person outside the demanding state who was in the state at the time of the crime may be extradicted. See, *e.g.*, *Ex Parte Morgan*, 78 F. Supp. 756 (1948), affirmed, 175 F. 2d 404, certiorari denied, 338 U.S. 827 (1949). The *Innes* decision, itself, was decided on the basis of a broad construction of the phrase "fugitive from justice." While there are several notable exceptions to the foregoing body of law, it must be conceded that "fugitive from justice," as used in 18 U.S.C. §3182, is not generally construed to mean "fugitive" in the normal sense. Nevertheless, petitioner is unaware of any case, state or federal, where a person physically incapacitated and thus unable to voluntarily return to the demanding state was found to be a "fugitive from justice." Moreover, the instant case presents a particularly compelling situation since the demanding state was notified of petitioner's physical condition and requested to delay requiring petitioner's presence.

Petitioner submits, quite simply, that a person confined to a hospital bed who is physically unable to return to the demanding state cannot reasonably be found to be a "fugitive from justice" and therefore subject to arrest and extradition.

The third question raised by this petition is whether under the circumstances of this case extradition would involve a denial of due process of law. Neither a state extradition act, nor Art. IV, §2, cl. 2, of the Constitution, nor Acts of Congress regulating interstate extradition can prevail over the Fourteenth Amendment. *Application of Middlebrooke*, 88 F. Supp. 943 (1950), reversed on other grounds, 188 F.2d 308 (1951), certiorari denied, 342 U.S. 862 (1951). Even the lowest fugitive has certain rights and the law demands that he be accorded due process at every step of the proceedings against him. The uncontested finding of the district court of Nevada in this case is that if petitioner is extradicted there is a strong possibility that he will be incarcerated without bail pending his appeal, and if he is incarcerated the probability of death before the appeal is decided approaches almost a certainty. Surely, with petitioner's very life at stake, he is entitled to have every procedural safeguard under the Fourteenth Amendment scrupulously applied to his case.

The California court, for reasons known only to itself, chose to disregard the undisputed medical evidence that petitioner could not appear for sentencing because he had been hospitalized with a heart attack, refused to grant a continuance, and ordered the petitioner arrested immediately. This action was clearly arbitrary and capricious and a violation of elementary due process of law.

When presented with uncontroverted medical evidence that a man is hospitalized with a heart attack, no court is free to reject that evidence out of hand, or proceed as if such a showing had not been made. If the California court thought petitioner might be malingering, or doubted the authenticity of the medical evidence, it was free to order an immediate examination of petitioner by any heart

specialist it or the State of California chose, or to take whatever steps were required to determine the facts.

However, elementary notions of civilized conduct and due process require that a court not endanger the life of a person hospitalized with a heart attack by ordering his arrest and extradition. The total failure of the California court to follow the normal procedures dictated by the situation constituted a gross abuse of discretion and deprived the petitioner of the protection afforded by due process of law.

The Nevada district court, on the other hand, when presented with the extradition documents showing that the medical condition of petitioner had been totally disregarded by the California court, in accordance with the procedures ordinarily adopted by courts in dealing with a physically incapacitated person, conducted an evidentiary hearing to determine whether petitioner was healthy enough to face further law enforcement proceedings. On the basis of expert medical testimony he concluded that petitioner was not. Accordingly, he granted the writ of habeas corpus and ordered that petitioner not be turned over to the California authorities to face further law enforcement proceedings. It is submitted that this decision was correct and proper under all the circumstances; and that the Nevada Supreme Court was in error in ruling in effect that expert medical testimony as to the physical condition of the petitioner and his prognosis could not be taken into account. Given the failure of the California court to consider petitioner's health and the danger to his life, elementary due process required the Nevada court to take these matters into account in ruling on the demand for extradition.

Moreover, under the extreme circumstances of this case, where petitioner's life is in the balance, the Nevada Supreme

Court's refusal to permit briefing of the case approaches a deprivation of due process. The decision below was *in petitioner's favor* and should have been affirmed by the Nevada Supreme Court if there was any legitimate construction of the record evidence, under the governing law, which would support an affirmance. For that court to reverse the decision, without affording the party who prevailed below an opportunity to present his analysis and construction of the record in support of that decision, seems highly irregular, notwithstanding the fact that this is a proceeding on a writ of habeas corpus.

In its decision the Nevada Supreme Court totally ignored four-fifths of the district court's findings, which were retrospective, as well as the clear implications of those findings under the governing law. Briefing by the parties is particularly important as an aid in interpreting and construing the record where a complicated legal question is resolved orally by a trial court with a few brief remarks on the record. The proper question before the appellate court is whether, on the record as a whole, the decision below is correct and can be sustained. Assuming, *arguendo,* that, the statements of the law in the Nevada Supreme Court's opinion are sound, the ruling by that court is in error.

The lower court's final prospective remarks were immaterial, for it had already made findings of fact sufficient to sustain the grant of the writ of habeas corpus for lack of probable cause. Denying the petitioner the opportunity to brief the case in support of the decision below constituted a denial of due process of law in the circumstances of this case.

The final issue raised by this petition is simply what are the minimum requirements of due process of law where it is shown that the accused has suffered a heart attack and

is physically unable to proceed. What procedures are to be employed by the courts in resolving the situation presented by this case? Heretofore, one would have thought that in our system of law it is understood by all that we do not proceed relentlessly against a man in total disregard of his health, his physical well being, and his very life. It would seem that at a minimum due process of law requires procedures for taking into account a man's physical well being, even after he has been convicted of a felony.

Apparently in this day and age it can no longer simply be assumed that a court, any court, will proceed in a civilized manner, with due regard for the well being of all persons who appear before it. The California court has not done so here. The Supreme Court of Nevada apparently feels compelled to acquiesce in the barbarous conduct of the court of its sister state out of some misguided view of comity, rather than to support the lawfully and procedurally sound resolution of the matter by its own lower court.

The guidance of this Court is badly needed here, not only for the petitioner, whose life is at stake, but for the purpose of spelling out the minimum procedures required by due process in the not unusual situation where an accused suffers a heart attack or other disabling illness in the course of criminal proceedings against him.

CONCLUSION

For the above-stated reasons, it is respectfully submitted that the petition for writ of certiorari be granted.

Respectfully submitted,

GERALD S. ROURKE

Welch & Morgan
900 – 17th Street, N. W.
300 Farragut Building
Washington, D. C. 20006

Attorney for Petitioner

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY, NEVADA, Appellant,) No. 7503

v. Filed Nov. 20, 1973

EUGENE CHARLES RANDONO, Respondent.

Appeal from an order granting writ of habeas corpus, Eighth Judicial District Court, Clark County; Carl J. Christensen, Judge.

Reversed.

Robert List, Attorney General and William E. Isaeff, Deputy Attorney General, Carson City, for Appellant.

Beckley, DeLanoy & Jemison, and Richard W. Myers, Las Vegas, for Respondent.

OPINION

By the Court, BATJER, J.:

On April 16, 1973, a jury in Orange County, California, found respondent guilty of two felonies. The trial judge scheduled sentencing for May 17, 1973, and permitted respondent to remain free on bail pending imposition of sentence. Respondent failed to appear for sentencing in the California Court, a bench warrant issued and extradiction proceedings were commenced.

The Governor of California requested from the Governor of Nevada the extradition of Randono and on July 16, 1973, the Governor of Nevada issued an executive warrant providing for Randono's arrest and surrender to the California authorities. Randono was arrested but was granted a writ of habeas corpus by the district court and was released from custody. The appellant contends the writ was improperly issued. We agree.

In granting habeas the lower court concluded that Randono's constitutional rights might be violated if he were extradited in as much as he has a "heart condition" and "probable incarcertation" after imposition of sentence might be detrimental to his health.

"*Habeas corpus* is the proper process for testing the validity of the arrest and detention by the authorities of the asylum state for extradition purposes. But a petition for a writ for that purpose tests only that detention; *it does not test the validity of the original or the contemplated incarceration in the demanding state* . . . In essence the rule is that the court may determine whether a crime has been charged in the demanding state, whether the fugitive in custody is the person so charged, and whether the fugitive was in the demanding state at the time the alleged crime was committed." Johnson v. Matthews, 182 F.2d 677, 679 (D.C. Cir. 1950). [Emphasis added.] See Compton v. Alabama, 214 U.S. 1 (1909)

A court in the asylum state cannot hear and determine the guilt or innocence of the accused as to the crime of which he is charged or the constitutional validity of phases of the anticipated penal action by the demanding state.

Here the rationale of the district court is that Randono might not get fair treatment in the California court. Anticipated ill treatment in the demanding state is not within

the contemplation of NRS 179.197 which provides that after the issuance of the executive warrant the legality of the arrest may be challenged by habeas. No authority has been cited, nor have we found any, that would authorize a trial judge to anticipate a potential violation of the constitutional rights of an accused if he is extradited to the demanding state. To the contrary, habeas has been denied where there has been a fear of lynching (Commonwealth v. Baldi, 70 A.2d 439 (Pa. 1950)); fear of a cruel and barbarous punishment and treatment (Commonwealth v. Ruch, 110 A.2d 240 (Pa. 1955)) and fear of racial prejudice (People v. Warden of City Prison, 63 N.Y.S. 2d 620 (Sup. Ct. N.Y. Co. 1946)). See also, Johnson v. Matthews, *supra;* Ex Parte Dukes, 97 A.2d 507 (N.J. 1953), cert. den. 347 U.S. 914 (1954); Ex Parte Marshall, 85 F.Supp. 771 (D.C.N.J. 1949); United State v. McClain, 42 F.Supp. 429 (D.C. Pa. 1942). Likewise, the question of the sanity of an accused is not to be decided in a habeas proceeding in an asylum state. See Charlton v. Kelly, 229 U.S. 447 (1913); Luker v. Koch, 489 P.2d 191 (Colo. 1971). Annot., 114 A.L.R. 693.

Extradition procedures contemplate the prompt return of a fugitive from justice upon a request from the demanding state. United States Constitution, Art. IV, Sec. 2; Uniform Criminal Extradition Act, NRS 179.177 to NRS 179.235 Incl. Respondent makes no showing that relief is unavailable to him in the courts of California. The contentions which the respondent has made to the district court should more properly be made in the courts of California. See Sweeney v. Woodall 344 U.S. 86 (1952).

Reversed.

We concur:
/s/ Thompson, C. J.
/s/ Mowbray, J.
/s/ Gunderson, J.
/s/ Zenoff, J.

/s/ Batjer, J.

ORDER TO STAY REMITTITUR

(Filed Nov. 26, 1973)

Pursuant to motion of Respondent and good cause appearing,

It Is Hereby Ordered that the issuance of the remittitur in this matter is stayed pending the disposition of Respondent's application to the Supreme Court of the United States for a writ of certiorari.

Dated this 26th day of November, 1973.

/s/ Thompson, C.J.

cc:

Honorable Robert List, Attorney General
Messrs. Beckley, DeLanoy & Jemison

APPENDIX B

AFFIDAVIT

State of California)
County of Orange) ss.

Your affiant, John D. Conley, having been first been duly sworn on oath, states as follows:

1. That he is over the age of twenty-one years and is employed as a Deputy District Attorney in the Orange County District Attorney's Office, Santa Ana, California.

2. That he has examined the official records of the Superior Court of the State of California, in and for the County of Orange, dealing with the case of the fugitive, Eugene Charles Randono. The records relate that on June 19, 1970, an information alleging violations of Sections 182.2 and 67 1/2 of the California Penal Code was filed against the fugitive. On April 4, 1973, the fugitive began a jury trial on these charges, as amended on April 4, 1973. On April 16, 1973, the fugitive was found guilty by the jury of these charges. On May 17, 1973, the fugitive failed to appear for sentencing and a bench warrant for his arrest was issued by the Honorable William C. Speirs of the Orange County Superior Court. That copies of documents reflecting the judicial actions referred to above are attached and hereby incorporated by reference into this affidavit.

3. That your affiant has been shown a photograph of a man, showing full face and profile views. Said photograph is attached and incorporated by reference into this affidavit. Said photograph depicts the person known as Eugene Charles Randono.

4. Your affiant has received information by means of a letter that the fugitive has fled California and is now in

custody in Nevada. A copy of this letter is attached and incorporated by reference into this affidavit.

5. Your affiant desires that the fugitive be extradited from Nevada and returned to Orange County, California, to be prosecuted as determined by Law. Your affiant will aid in this prosecution.

DATED this 7th day of June, 1973.

/s/ John D. Conley
Deputy District Attorney
Orange County, California

Subscribed and sworn before me
this 8th day of May, 1973
/s/ Kenneth E. Noel
Judge of the Superior Court of the
State of California, County of Orange [Seal]

FILED
MAY 17 1973
WILLIAM E. ST. JOHN, COUNTY CLERK
By: [illegible] Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
EUGENE CHARLES RADONO,
Defendant.

NO. C-23631

BENCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN IN THIS STATE:

GREETINGS:

An Information having been filed in this County charging the above-named defendant with violation of Sections 182.2 & 67 1/2 P.C.;

NOW, THEREFORE, YOU ARE COMMANDED forthwith to arrest the above-named defendant at any time of the day or night and bring said defendant before this Court, or if the Court be not in session, to deliver said defendant into the custody of the Sheriff-Coroner of Orange County, California.

The reason for this Warrant is:
For Failure to Appear.

Bail is fixed in the amount of $ 25,000.00.

Given under my hand, with the seal of said Court affixed this 17 day of May, 1973.

WILLIAM E. ST. JOHN, COUNTY CLERK
BY: [illegible] Deputy

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE
JUN 5 1973
WILLIAM E. ST. JOHN

DEFENDANT IDENTIFICATION INFORMATION

AKA:
DOB: 8-24-25 RACE: Caucasian HT: 5'9" WT: 165 SEX: Male
HAIR: gray EYES: blue CII: 3054661 FBI: 318714H
DL: FR250324 OC: 186519 SOC. SEC.: 517-22-5621
Last Known Address: (allegedly South Nevada Mental Hospital (Penguin
I.D. Marks: EXTRADITION: Attorney Waiver
INVESTIGATING AGENCY: Orange County District Attorney's office
ANY ADDITIONAL INFORMATION:

NOTE: Certified copy of this warrant sent to Las Vegas P.D. 5-17-73

232-217.1 (8) 2 yr. & OR & Nevada

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 10

Court convened at 1:30 P M. May 17 1973, present
Hon. WILLIAM C. ERVING, Judge; David T. Beatley, Deputy Clerk;
John Murphy, Deputy Sheriff; R. Gerritsen, Reporter;
and the following proceedings were had:

C-23631 PEOPLE VS RANDONO, Eugene Charles

Hearing re: Probation Report and Pronouncement of Judgment
Defendant not in court but represented by counsel Leonard McBride.
People represented by counsel William Morrissey, deputy District
Attorney. A letter of "George V. H. Kleifgen , M.D." May 16, 1973.
was recieved and ordered filed. Motion by defendants counsel for a
continuance. Motion denied. A bench warrant to issue forthwith for
Eugene Charles Randono bail set at $25,000.00 . Present bail forfeited
EXTEND 5-17-73

JUN 5 1973

Statistical Code Use Only	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.

MINUTE ORDER

ORAL OPINION OF THE COURT

* * *

BY THE COURT: What a Judge might do and what a District Attorney intends to do are really items of speculation and at most, would carry with it only a possibility of it happening.

In this particular case, however, it is uncontroverted that the Respondent was hospitalized; that this fact was conveyed to the Court where this Respondent was to have been present for entry of judgment and sentencing.

It is further uncontroverted and clearly shown that this Respondent was on bail during the trial and after the return of the verdict by the jury, for whatever the charge was, and was on bail up until the time of the day of the entry of judgment and sentencing.

It is further clearly shown and admitted that these reasonable circumstances for failure to attend on the day for entry of judgment and sentencing were known and considered prior to the issuing of a Bench Warrant; that pursuant to this Bench Warrant, the Respondent was forcibly detained in his hospital bed where he was a patient by the use of bands or chains or whatever.

In view of these uncontroverted facts, as the same are bolstered by the corroborating testimony of the California lawyer and in his representations here, it appears that very probably the constitutional guarantee of the rights of this Respondent will be denied unless this Writ of Habeas Corpus in this proceeding is granted.

The Court feeling that there is a strong probability that incarceration will follow without bail, based upon these facts that have just been recited in the record, and the Court further finding that the probability of death ap-

proaches almost a certainty as reflected by the testimony of Dr. Friedman, the Court at this time grants the Writ.

Bond is exonerated.

ATTEST, Full, true and accurate transcript of proceedings had.

/s/ J. V. Brower
Official Court Reporter.

Case No. 25174 (Filed Sept. 19, 1973)

IN THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE
EXTRADITION OF

EUGENE CHARLES RANDONO,

Respondent.

ORDER

The Respondent's Petition for Writ of Habeas Corpus having come on for hearing before the above-entitled Court on the 12th day of September, 1973, at 2:00 P.M., in Department VII, RICHARD WM MYERS, Esquire, of the firm of Beckley, De Lanoy & Jemison, Chartered, appearing on behalf of Respondent, LEON SIMON, Esquire, Deputy District Attorney, Clark County, Nevada, and WILLIAM E. ISAEFF, Esquire, Deputy Attorney General, State of Nevada, appearing on behalf of State of Nevada, JERROLD J. COURTNEY, Esquire, also appearing, the Court having the benefit of testimony, Points and Authorities and argument of counsel, and for good cause appearing therefor

IT IS HEREBY ORDERED, that the Petition for Writ of Habeas Corpus is hereby granted; and it is further

ORDERED, that the Respondent's bond is exonerated.

DATED AND DONE, this 19 day of September, 1973.

/s/ Carl J. Christensen

BECKLEY, DE LANOY & JEMISON,
Chartered

By /s/ Richard W. Myers
Attorneys for Respondent
1000 First National Bank Bldg.
Las Vegas, Nevada 89101

APPENDIX C

Case No. 25174 (Filed Aug. 9, 1973)

IN THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

EUGENE CHARLES RANDONO, Petitioner,	)
v.	PETITION FOR WRIT
ROY A. WOOFTER, DISTRICT ATTORNEY CLARK COUNTY, NEVADA, Respondent.	) OF HABEAS CORPUS

COMES NOW, EUGENE CHARLES RANDONO, Petitioner, by and through his attorneys, Beckley, De Lanoy & Jemison, Chartered, and respectfully shows:

1. That Petitioner was imprisoned in the Clark County jail from July 22, 1973, to July 26, 1973, and is restrained of his liberty by virtue of a $5,000 cash bail posted with the Clerk of Clark County on July 26, 1973, pursuant to the order entered by the Honorable Leonard Gang on July 26, 1973.

2. That Petitioner has not been committed and is not detained by virtue of any judgment decree, final order, or process issued by a court or judge of the State of Nevada; nor is he committed or detained by virtue of the final judgment or decree of such a tribunal of civil or criminal jurisdiction; nor the final order of such a tribunal made in a special proceeding instituted for any cause; or by virtue of an execution or other process issued upon such a judgment, decree or final order.

3. That the cause or pretense of the imprisonment and restraint of petitioner, according to the best knowledge and belief of petitioner is an arrest in pursuance of a warrant issued by Mike O'Callaghan, Governor of the State of Nevada, on a requisition from the Governor of the State of California reciting that the petitioner is a fugitive from the justice of the State of California.

4. That Petitioner's imprisonment and restrain is illegal in that

A. The documentation accompanying the said demand of the Governor of the State of California does not comply with N.R.S. 179.177 to 179.235 and is defective as follows:

1. The said documentation does not contain a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole, and

2. The said documentation does not contain a copy of the indictment, information, affidavit, judgment of conviction or sentence authenticated by the executive authority making the demand, and

3. The said documentation is otherwise defective, and

B. That the alleged bench warrant issued by the Honorable William C. Speirs of the Orange County Superior Court, California, on May 17, 1973, was improperly issued against the Petitioner who was then a patient of the Southern Nevada Memorial Hospital, Las Vegas, Nevada, suffering from a coronary artery insufficiency, all of which was well known to the said Honorable William C. Speirs, and

C. That execution of the extradition sought would at this time be harmful to the life of the Petitioner who pres-

ently suffers from acute heart disease and whose treating physician is of the opinion that travel is contraindicated and would be injurious to the Petitioner.

5. That in consequence of the aforesaid, the Petitioner is unlawfully restrained of his liberty in violation of the Fifth Amendment of the Constitution of the United States and Section Eight of the Constitution of the State of Nevada.

6. Wherefore, Petitioner prays that a Writ of Habeas Corpus be issued directing that a hearing and determination as to the cause of such imprisonment and restraint take place before the Honorable Judge Leonard Gang of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, at 2:00 P.M. on the 14th day of August, 1973.

Respectfully submitted,

BECKLEY, DE LANOY & JEMISON,
Chartered

/s/ Richard W. Myers, Esq.
Attorneys for Petitioner
1000 First National Bank Bldg.
Las Vegas, Nevada

I, RICHARD W. MYERS, Esquire, declare:

That I am an attorney at law duly licensed to practice law in the State of Nevada and that I am associated with the law firm of Beckley, De Lanoy & Jemison, Chartered, attorneys for Petitioner Eugene Charles Randono. I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on August 9, 1973, at Las Vegas, Nevada.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Richard W. Myers

RECEIPT of copy of the foregoing Petition for Writ of Habeas Corpus is hereby acknowledged this 9 day of August, 1973.

ROY A. WOOFTER
DISTRICT ATTORNEY
CLARK COUNTY, NEVADA

By /s/ Clara Davis
200 East Carson Avenue
Las Vegas, Nevada